



House Criminal Justice Committee
April 12, 2016

Successor Judge Vetoes of Lifer Paroles
HB 5273

Good morning, Chairman Heise and members of the Committee. My name is Barbara Levine; I'm the associate director of the Citizens Alliance on Prisons and Public Spending. The unique plight of Michigan's parolable lifers is an issue on which CAPPS has long focused. Objections to parole from successor judges are one of the multiple hurdles these lifers face. We are very grateful to Rep. Pagel for his leadership on this matter and to Rep. Heise for taking the bill up so promptly.

I'm going to focus my testimony on the total number of vetoed lifers and their characteristics as a group. But I'd like to begin by putting this issue in context.

Michigan has a pretty unique sentencing scheme. It makes the penalty for all the most serious offenses short of first-degree murder "life or any term." This gives the sentencing judge the discretion to set both the minimum and maximum sentences or, in the alternative, to impose a term of "parolable life." If they pick parolable life, the first parole eligibility date is set by statute, commonly known as the lifer law. Until 1992, the lifer law required service of a minimum of 10 years. In 1992, that was changed to 15 years.

Hundreds of people currently serving parolable life terms were sentenced in the 1960s, '70s and '80s. Their judges expected that, if they did their time well, they would be released if not exactly in 10 years, then in 12 or 15. Long indeterminate sentences, which at the time were subject to reduction by very generous good time credits, and lifer terms were treated as interchangeable. Judges even discussed with defense attorneys whether they would prefer to have their clients receive a long minimum sentence, such as 40 years that with good time could bring parole eligibility in 16, or a life term that could bring parole eligibility in 10. Not surprisingly, given the choice, defendants chose life. Judges routinely said to young defendants at sentencing: "I'm giving you life but if you behave and finish school, you can be released in 10."

But then parole policies tightened. Lifer paroles all but evaporated for over a decade and even now, relative to the backlog, are granted sparingly. As a result, people who judges thought would be released in 10 years have now served decades longer than that. The MDOC's most recent report to the legislature shows that 1,004 prisoners are currently eligible for parole on their life sentences. Of these, 632 have served more than 25 years; 273 have served more than 35 years. Most of their counterparts who committed similar offenses but received indeterminate sentences were released long ago.

The parolable lifers did not receive life sentences because they were the "worst of the worst." Back in the days before sentencing guidelines, whether you got life or a long term of years depended on who your sentencing judge was and what the judge believed a life sentence really meant. Now things have come full circle. Today, whether the board is permitted to grant

release almost always depends on the identity of a successor to the sentencing judge and what the successor believes his or her role in the process should be.

So now let's look at who we're talking about. Note that we are *not* talking about people serving parolable life for drug offenses. Their eligibility depends on different rules but they typically get released once they become eligible.

Attached to my testimony are two items. One is a summary that compares the whole group of lifers scheduled for public hearing with those who were vetoed. The other is a chart of all 61 lifers who have had their paroles vetoed in the last 10 years. It contains information about the individuals, their offenses and the identity of their objecting judges.

The chart also has a code that shows the basis of the objection. Judges do not have to give any reason and in fifteen cases they did not. Most often they refer to the seriousness of the offense or the effect on the victim, which, of course, never changes. If the facts of the offense are perpetually a basis for denying release, the objecting judge is effectively converting the original parolable life sentence to life without parole.

The vetoes include people who were bedridden or terminally ill, who were teenagers when they committed their crimes 35 and 40 years ago, and who are now in their sixties and seventies.

- Seven lifers died in prison after being vetoed.
- Six were ultimately released despite the initial objection.
- Six of the objections were from the original sentencing judge; 90% were from successors.
- Nine were vetoed twice, sometimes by the same successor, sometimes by different ones

Some broad observations:

The board has scheduled 318 lifers for public hearing over the last 10 years. Of these, 61 or 19 percent have been vetoed. Sixty-four percent, or 203, have actually been released. Of these, eight have been returned to prison, four for technical parole violations and four with new convictions. That is a recidivism rate of four percent. Of the new convictions, only 1 was assaultive.

There is no significant difference between the people who were and were not vetoed, other than the identity of the objecting judge. On average, they were in their mid-twenties at the time of the offense, over 60 by the time of parole consideration, and had served more than 30 years. A little over half had been convicted of murder.

The counties from which the lifers come reflect both their population and the propensity of their bench to impose life terms decades ago. What is particularly interesting is their proportion of objections. So Oakland, for instance, which had 28 cases to consider, had objections in four, while Saginaw, which had 20 cases total, had objections in seven. And Genesee, which had 11 cases, had objections in none.

Most interesting is Wayne County. Sixteen vetoes in 137 possible cases is about 12%, below the average. But then consider that 11 of those 16 were from a single judge. The remaining five are from five different judges. Thus, a single judge who happens to be the successor to judges who imposed life terms in the 1970s and '80s, is now in a position to prevent paroles contrary to his predecessors's intentions and out of all proportion to the members of his own bench and to circuit judges generally.

The exercise of lifer vetoes by successor judges has no principled rationale. It adds nothing to public safety or to the quality of the decision-making process. The board does not grant release without closely examining the lifer's history and conduct, interviewing the lifer extensively and receiving input from all interested parties. Veto authority burdens successor judges with the

responsibility of making critical decisions about cases with which they have no familiarity. As the support of the Michigan Judges Association for HB 5273 reflects, most would prefer to leave those decisions to the painstaking procedures of the parole board. The cases that are vetoed are so indistinguishable from those that are not as to appear arbitrary in comparison.

Lifers spend decades trying to earn their release. Successor judge vetoes are crushing to those who come so close to freedom only to lose it to the luck of the draw, frustrating to a parole board that is powerless to implement its own decisions, and costly to taxpayers. The veto power was originally granted only to the actual sentencing judge. Why that power was extended to successor judges in 1953 is lost to the mists of history. But it has proven to be an unfortunate choice that we urge you to rectify.

LIFER VETO FACT SHEET

January 2005 – March 2015

	<u>Scheduled for public hearing</u>	<u>Vetoed</u>
Total	318	61 (19%)
Average age at offense	26	25
Age 15	5	3
Age 16	16	1
Age 17	24	7
Average current age (still incarcerated)	61	61
Average age at release		
• parole	58	62
• death	72	67
Average years served	32	35
Female	15	1
Race/ethnicity		
• White	114 (36%)	28 (46%)
• African-American	190 (60%)	29 (48%)
• Hispanic	9 (03%)	3 (05%)
• Other	5 (02%)	1 (02%)
Most serious offense		
• Murder	177 (56%)	31 (51%)
• CSC	37 (12%)	10 (16%)
• Armed robbery	58 (18%)	13 (21%)
• Assault with intent to murder*	30 (09%)	4 (07%)
• Other	16 (05%)	3 (05%)
Result of public hearing (257)		
• Released	203 (79%)	
• Parole denied	32 (13%)	
• Decision/release pending	20 (08%)	
• Died before decision	2 (01%)	
No. of judicial objections		
• Sentencing judge		6
• Successor judge		55
Basis of judicial objection (may be multiples)		
1. Current information about prisoner		22
2. Nature of offense/effect on victim		39
3. No reason given, just: "I object."		15

*Includes attempt, conspiracy and solicitation to murder

County	Hearings Scheduled	Vetoed
Wayne	137	16
Oakland	28	4
Saginaw	20	7
Kent	15	2
Berrien	13	5
Kalamazoo	13	2
Genesee	11	0
Macomb	9	3
Jackson	8	1
Ingham	7	0
St. Clair	6	0
Washtenaw	6	3
Bay	4	1
Ottawa	4	0
Unidentified	4	0
Eaton	3	0
Gratiot	3	0
Monroe	3	3
Muskegon	3	2
Allegan	2	1
Calhoun	2	0
Lenawee	2	2
Midland	2	1
Shiawassee	2	2
Alpena	1	1
Arenac	1	0
Barry	1	1
Benzie	1	1
Delta	1	0
Grand Traverse	1	0
Ionia	1	1
Isabella	1	0
Livingston	1	0
Manistee	1	1
Otsego	<u>1</u>	<u>1</u>
	318	61

**Judicial Vetoes of Lifer Paroles
January 2005 thru March 2016**

	Last	First	Prison Number	Age at Offense	Age/Current or at Release	Years Served	Race/Ethnicity	Offense	County	Hearing Date	Objecting Judge	Basis *	Comments
1	Hughes	Lee	137811	33.4	75.9	42.0	W	M 2	Allegan	12/08/15	Bakker	2	
2	Booth	Terry	146357	23.0	63.4	39.6	W	CSC 1	Alpena	09/29/09	Mack	1 & 2	
3	Jones	Ricky	170445	27.7	60.3	31.7	B	M 1 Consp	Barry	11/17/10 03/18/14	Fisher	3	Paroled 06/19/14
4	Bergevin	John	98769	34.4	76.3	35.4	W	Kidnap	Bay	11/30/09	Caprathe	3	
5	Pugh	Mitchell	196686	16.5	44.7	27.4	W	M 2	Benzie	05/07/13	Batzer	1 & 2	Sentencing judge
6	Johnson	Anthony	125208	19.8	62.7	39.1	B	M 2	Berrien	12/06/07 03/11/09 07/16/13	LaSata LaSata	2	
7	Johnson	Nathaniel	135703	17.9	56.6	35.3	B	M 2	Berrien	02/02/09	Donahue	1 & 2	Died 1/28/12
8	Brady	Leroy	108441	38.1	78.0	39.5	B	RA Rape	Berrien	05/11/09	Donahue	2	Died 03/26/14.
9	Haynes	Charles	170674	18.5	52.9	33.4	B	RA	Berrien	02/22/11	Donahue	3	
10	Mingus	Ned	92133	44.1	77.7	32.9	W	CSC 1	Berrien	08/13/15	Pasula	2	Died 07/16/15
11	Closser	David	137666	20.0	59.8	39.1	W	RA Kidnap	Ionina	12/08/09	Hoort	1 & 2	
12	Knight	Tommy	134978	30.2	65.7	32.7	N AM	RA	Jackson	11/23/10	McBain	1	
13	Dunigan	Anthony	166949	15.5	52.8	34.6	B	M 2	Kalamazoo	01/04/12	Lightvoet	3	
14	Acrey	Kirk	144481	20.6	61.6	40.1	B	RA	Kalamazoo	04/10/13	Lightvoet	1	
15	Patterson	Chester	130169	17.2	62.5	44.6	B	M 2	Kent	05/22/08 03/11/10 05/22/13	Redford	3	
16	Duthler	Michael	227882	19.0	43.2	23.4	W	M 2	Kent	02/27/14	Buth	2	Sentencing judge
17	Baublitz	Gary	164662	17.3	52.5	34.4	W	M2	Lenawee	02/03/11	Noe	1 & 2	
18	Wilson	Nathan	240711	19.1	40.8	21.3	W	RA	Lenawee	09/27/11	Pickard	1 & 2	
19	Bunker	David	118221	19.3	68.6	49.3	W	M 2	Macomb	11/19/09	Druzinski	2	
20	Perkins	George	213370	50.5	71.6	19.9	W	CSC 1	Macomb	11/04/10	Miller	2	Died 10/25/10
21	Logan	David	141027	19.8	61.4	39.5	W	M 2	Macomb	08/20/13	Druzinski	2	
22	McLaughlin	Timothy	205596	20.2	47.0	26.3	W	M 2	Manistee	07/15/14	Batzer	2	Sentencing judge
23	McNier	Kim	139682	33.6	55.8	21.5	W	RA	Midland	09/23/08	Lauderbach	2	Died 04/11/09

*Basis

1 = Gives some current reason, e.g., psych eval, misconduct history

2 = Refers to offense/effect on victim

3 = No reason given, just: "I object."

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24	Payne	Rollin	132050	29.4	74.1	44.1	W	M 2	Monroe	09/14/10	LaBeau	2	
25	Holman	Robert	137947	24.0	66.5	41.9	B	M 2	Monroe	05/15/12	M. Weipert	2	
26	Eggleston	Robert	177065	28.9	60.5	31.6	W	Asslt w/Int to Murder	Monroe	03/26/13	Michael Weipert	1 & 2	
27	Spytma	Timothy	143418	15.1	54.7	39.6	W	M 2	Muskegon	02/24/09 05/01/14	Graves	2	Paroled 07/22/14
28	Frost	Gerald	172534	39.6	66.3	26.2	W	CSC 1	Muskegon	05/12/15	Marietti	1	
29	Gallant	Raymond	195590	26.4	55.6	27.6	W	M 2	Oakland	05/22/08	Andrews	1 & 2	Sentencing judge
30	Morris	Zack	161640	30.1	67.0	35.8	W	RA	Oakland	11/23/09 02/27/13	Bowman Bowman	1	
31	Moran	Leslie	149819	35.8	75.3	38.9	W	M 2	Oakland	11/23/10	Langford-Morris	2	
32	Middleton	Robert	121894	19.7	67.8	47.2	W	M 2	Oakland	03/14/13	Bowman	1 & 2	
33	Dewey	William	147266	36.1	76.2	38.7	W	M 2	Otsego	07/15/14	Mertz	1 & 2	
34	Howard	John	126847	29.8	71.3	38.8	W	M 2	Saginaw	05/20/08	Heathscott	2	Prior veto in 1992. Died 12/27/10.
35	Guerrero	Eduardo	133491	17.0	61.5	43.7	H	CSC 1	Saginaw	05/07/09	Crane	2	
36	Vargas	Martin	133525	17.7	62.2	43.6	H	CSC 1	Saginaw	05/07/09	Crane	2	Prior veto in 1993;
37	Eddington	William	120489	29.1	67.9	38.5	B	RA	Saginaw	11/24/09	Crane	3	Died 11/25/12
38	Canales	Jose	155244	18.2	56.9	37.5	H	CSC 1	Saginaw	12/09/09	Crane	2	
39	Taylor	Donald	143720	22.8	59.9	36.6	B	RA, FF	Saginaw	12/06/10	Borchard, Fred	1	
40	Jones	Earl	140454	22.7	60.5	37.2	B	M 2	Saginaw	12/10/13	Boes	1 & 2	
41	Gilbert	Paul	195332	19.9	48.6	27.7	W	Asslt w/Int to Murder	Shiawassee	10/18/12	Lostracco	2	Sentencing judge
42	Bellaire	Larry	287479	55.6	73.6	16.8	W	M 2	Shiawassee	08/06/13	Lostracco	2	Sentencing judge
43	Ross	Thomas	114722	40.1	75.4	34.8	B	RA	Washtenaw	04/15/08 01/29/09	Brown, Archie	1 & 2	Commutation 03/26/09.
44	Beauchamp	Mark	149515	17.2	57.1	39.0	W	M 2	Washtenaw	05/19/09	Swartz	2	
45	Davis	Holly	116440	25.6	67.9	41.8	B	Kidnap & RA	Washtenaw	01/29/15	Brown Archie	1 & 2	

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46	Hawkins	Lonnie	108021	21.9	64.2	41.5	B	RA	Wayne	05/20/08 01/20/09	Brown, Helen	1	Commutation 05/29/09
47	Bryson	Stephen	108607	29.0	69.4	39.5	B	RA	Wayne	12/09/08	Ryan	1	Died 11/30/14
48	Marlin	James, Jr.	126964	17.7	58.4	40.0	B	RA Aslt w/i Rob	Wayne	06/23/09	Chylinski	3	Died 12/31/10
49	Robinson	Frank	143503	23.9	62.1	38.0	B	M 2	Wayne	9/16/09 07/23/13	Chylinski	3	Paroled 11/15/13
50	Kincaid	Waymon	137927	18.7	59.0	39.4	B	M 2	Wayne	11/12/09 05/29/13	Chylinski Chylinski	2	
51	Benson	Leslie	154948	25.4	63.4	37.7	B	M2	Wayne	01/25/10	Chylinski	3	
52	Foster	Derek	156952	23.2	60.5	37.1	B	M 2	Wayne	02/09/10 06/12/12	Chylinski Chylinski	3	
53	Reynolds	Maurice	189469	15.2	46.7	28.6	B	M 2	Wayne	04/13/10	Chylinski	3	
54	Mayer	Ervin	161127	21.3	54.7	32.0	B	M 2	Wayne	11/17/10 08/25/11 07/17/12	Chylinski Chylinski	3	Paroled 10/23/12
55	Barbier	Susan	203402	29.6	57.5	26.6	W	CSC 1	Wayne	12/27/10	Kenny	2	
56	Valeroso	Romando	139042	29.6	71.3	33.5	B	Aslt w/Int to Murder & RA	Wayne	02/27/13	Chylinski	3	
57	Johnson	Richard	135225	19.5	60.3	40.1	B	RA & CSC 1	Wayne	06/11/13	Hathaway	1 & 2	
58	Carter	George	130300	24.5	64.1	39.1	B	M 2 & RA	Wayne	12/17/13	Chylinski	2	
59	McCreary	Stephen	151133	18.5	57.3	38.5	B	M 2	Wayne	03/27/14	Hathaway	1 & 2	
60	Bonner	Ozen	193725	18.4	46.6	27.9	B	M 2	Wayne	03/17/15	Chylinski	3	
61	Gaskin	Kimball	177637	25.8	52.0	25.3	B	RA	Wayne	06/09/15	Cameron	3	

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